

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

There were no changes to the text of the regulation.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF JULY 26, 2013 THROUGH SEPTEMBER 9, 2013.

COMMENT NO. 1:

Mr. Mike Jacob, on behalf of the Pacific Merchant Shipping Association (see Comments, p. 1), in the its September 3, 2013 letter, requested that the Final Statement of Reasons include a discussion of the “evolution, intent, context, and limitations with respect to the use of the term ‘medical disability leave’” in section 217.35 of the proposed regulations. (Comments, p. 2.)

Response: PMSA’s concern, which was earlier expressed in its letter dated October 2, 2012 (attached as Appendix A), was that placing a pilot on “medical disability leave” under proposed section 217.35(a) as it then read would create possible confusion concerning whether that determination also embodied a conclusion that a pilot was eligible for a disability pension under section 1164(b) of the Harbors and Navigation Code. Eligibility for a disability pension under the Code requires a Board determination that a pilot has a disability “of permanent or extended and uncertain duration.” At the time of PMSA’s October 2012 letter, the proposed regulation authorized two types of fitness determinations regarding a pilot who was unfit for duty: “not fit for duty” (NFFD) and “permanently not fit for duty” (PNFFD).

An October 26, 2012 letter from the San Francisco Bar Pilots (attached as Appendix B) validated PMSA’s concern by asserting that a PNFFD determination under the fitness regulations would render a pilot eligible for a disability pension under the Code. SFBP asked that the draft regulations, which then included a provision for a PNFFD fitness determination, be left as is.

At a subsequent meeting held on October 30, 2012, the committee considering the regulations agreed that the fitness regulations were not intended to touch upon eligibility for disability pensions. In response, the committee removed references to PNFFD wherever that term appeared in the draft regulations. The committee also made other changes in the regulations to make clear that the fitness determinations called for by the regulations did not implicate eligibility for disability pensions. A more complete history of the changes to the language of the draft regulations that were made in response to PMSA’s concerns is contained in a September 11, 2013 memorandum from Board Counsel to the Joint Committee on Fitness and Rules and Regulations (attached as Appendix C).

The foregoing changes dispelled any possible confusion between a pilot being temporarily placed on “medical disability leave” under the fitness regulations and being found permanently disabled for pension purposes under the Code. PMSA’s September 3, 2013 comment letter agrees when it states that elimination of the term “PNFFD” from the regulations was done “with the clear intent to eliminate any possible confusion between the application of medical leave and a disability determination for purposes of the pilot pension.” (Comments, p. 3.)

The language of proposed section 217.35(a), as modified, is clear as to its limited scope and does not require modification. The Board nonetheless has no objection to PMSA's request that the Final Statement of Reasons include the drafting history of section 217.35(a), as an aid in resolving any possible future doubt about the intended meaning of the provision, as revised. The foregoing discussion is the Board's response to this request by PMSA.

One other element of the PMSA comment letter of September 3, 2013, requires a corrective response concerning the origin of the subject fitness regulations. At page 1 of its letter, PMSA states:

PMSA is very supportive of this rulemaking effort and actively supported the legislation that required additional administrative oversight of licensees and their medical fitness at the Board (SB 1217 (Chap. 568, Statutes of 2008), SB 1627 (Chap 567, statutes of 2008)), which in turn has ultimately led to the generation of these new regulations."

This statement misstates the genesis of these fitness regulations. While the Board appreciates PMSA's support for its rulemaking effort, it is not true that the legislation PMSA refers to (SB 1217 and SB 1627) led to the generation of these pilot fitness regulations. To the contrary, the current rulemaking reflects recommendations and other considerations flowing from a multi-year study by UCSF of pilot fitness determination. The Legislature funded this study in response to a Spring Finance Letter for fiscal year 2008/09 that Board staff submitted to the Department of Finance on March 14, 2008, substantially prior to the enactment of either piece of legislation. The Governor signed both bills on September 29, 2008. They did not become effective until January 1, 2009.

SB 1217 did establish a new reporting requirement for the Board's licensees with respect to changes in their prescription medications—a change that the Board requested of the bill's sponsor. This change, however, was not the genesis of the referenced UCSF study or this rulemaking effort—both of which were Board-sponsored initiatives.

LOCAL MANDATE DETERMINATION

The Board has determined that the adoption of the regulations will not impose a mandate on local agencies or school districts.

ALTERNATIVES DETERMINATION

The Board has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.